

ORIGINAL



0000000720

S. David Childers, Esq. #004538
Christy C. Brown, Esq. # 0017968
Tasha N. Cycholl, Esq. #019727
LOW & CHILDERS, P.C.
2999 North 44th Street, Suite 250
Phoenix, AZ 85018
Telephone: (602) 266-1166
Attorneys for Arizona Competitive Power Alliance

2003 DEC 19 P 4: 16

AZ CORP COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTEN K. MAYES

DOCKETED

DEC 19 2003

DOCKETED BY

[Handwritten signature]

IN THE MATTER OF THE
APPLICATION OF ARIZONA
PUBLIC SERVICE COMPANY FOR
A HEARING TO DETERMINE THE
FAIR VALUE OF THE UTILITY
PROPERTY OF THE COMPNAY
FOR RATEMAKING PURPOSES, TO
FIX A JUST AND REASONABLE
RATE OF RETURN THEREON, TO
APPROVE RATE SCHEDULES
DESIGNED TO DEVELOP SUCH
RETURN, AND FOR APPROVAL OF
PURCHASED POWER CONTRCT

DOCKET NO E-01345A-03-0437

**MOTION TO REVISE THE
PROCEDURAL SCHEDULE
OR, IN THE ALTERNATIVE,
TO BIFURCATE RATE CASE
TO EXCLUDE ISSUES
REGARDING PWEC ASSETS**

I. INTRODUCTION

On June 27, 2003, Arizona Public Service Company ("APS")
submitted its request for a rate increase of \$175 million, or 9.8%. As a
major component of that request, APS seeks authorization from the
Arizona Corporation Commission ("Commission") to transfer into its rate
base approximately 1700 MW of generating capacity built by its

1 unregulated affiliate, Pinnacle West Energy Company ("PWEC"). Indeed,
2 the need for an APS rate increase is premised upon granting this
3 requested transfer: without this proposed addition to rate base and the
4 associated adjustments to APS's power supply costs and related
5 expenses, it is not clear that a rate increase is justified.¹
6
7

8 On December 3, 2003, APS issued a Request for Proposals ("RFP") to
9 acquire additional generating resources, to be conducted concurrently
10 with the general rate case. The issuance of this RFP by APS raises the
11 following issues:
12

13 • Although the inclusion of the PWEC generating assets in the APS
14 rate base is an issue in the current proceeding, the RFP **by its terms**
15 assumes that the Commission will approve the proposed rate-basing of
16 the PWEC generating assets: the "need" to be satisfied by the RFP is
17 defined **according to a load/resource balance in which the PWEC**
18 **generating assets are included in the APS rate base.**

19 • Although power deliveries from the resources sought in the RFP
20 would not commence until June 2007, the RFP provides for a schedule
21 concurrent with the rate case that **would allow the results of the RFP to**
22 **become available – at least to APS – while testimony is still being filed in**
23 **this case.**

24 • Although APS has squarely raised as an issue in this proceeding the
25 adequacy of the competitive wholesale generation market in Arizona,
26 the RFP **effectively seeks to garner additional information on that issue**
27 **while the rate case is pending**, and forces parties to prepare prefiled
28 testimony in an environment of uncertainty – and limited access to
information – which APS itself has created.

• The Arizona Competitive Power Alliance (the "Alliance") supports
APS looking to the competitive wholesale market as a means of filling its
resource needs, and supports APS's use of competitive bidding to do so.
However, the particular terms of the RFP (1) are defined too narrowly – by

¹ See Robinson testimony at pp. 11-12 and Attachment DGR-4, p. 1; Robinson testimony
at pp. 26-29 and Attachment DGR-5, p. 9.

1 excluding the 1700 MW to be served by the PWEC generating assets –
2 and (2) result in the RFP being unacceptably intertwined with the issues in
3 the pending rate case. The combination of these factors results in an RFP
4 process that may be of limited value to APS and the Commission.

5 By this Motion, the Alliance seeks to address these issues by asking the
6 Commission to (1) require that the scale of the RFP be expanded so that it
7 will produce meaningful results that the Commission can use in evaluating
8 the proposal in this case to rate base the PWEC generating assets, and
9 (2) adjust the rate case schedule so that the RFP is not conducted in an
10 environment where the outcome of the process potentially has prejudicial
11 impacts in the rate proceeding.² Alternatively, if APS wants to maintain
12 the existing rate case schedule, matters in the rate case relating to the
13 PWEC generating assets should be bifurcated for later consideration,
14 given their inextricable relationship to the RFP process.
15
16

17 II. BACKGROUND

18 19 **A. *The APS Rate Filing Places at Issue in this Proceeding the*** 20 ***Maturity and Reliability of the Competitive Wholesale*** 21 ***Power Market in Arizona.***

22 APS is proposing in this proceeding to include in its rate base five
23 generating units with an aggregate capacity of 1700 MW.³ These units
24

25 ² The positions contained in this filing represent the views of the Alliance as an
26 organization, but not necessarily the views of any particular member with respect to any issue.
27 Any individual Alliance member that is a party to this proceeding may take different positions
28 with respect to any issue.

³ The units proposed to be transferred are West Phoenix Units 4 & 5, Redhawk
Units 1 & 2, and Saguaro CT Unit 3.

1 were built originally by PVEC as unregulated merchant generating units
2 ("PVEC Assets"), and are proposed to be included in the APS rate base at
3 2004 depreciated original cost. (Bhatti, p. 3.) As justification for proposing
4 to rate base the PVEC Assets, the APS direct testimony frequently cites the
5 maturity and reliability – or, more precisely, the alleged immaturity and
6 unreliability – of the competitive wholesale market to meet its needs. Mr.
7 Wheeler, for example, states as follows:
8

9
10 "[T]he results of the Commission's Track B solicitation . . . demonstrated
11 that the competitive market is as of yet too immature . . . and cannot be
12 relied upon to reasonably meet APS customers' needs at all times and
13 under all market conditions." (p. 5, lines 14-18)

14 "Offers of power for delivery after 2005 [in the Track B solicitation] were
15 virtually non-existent⁴ [and] . . . underscore[s] the essential difference
16 between a vertically-integrated utility's obligation and ability to plan for
17 and provide for the resources needed to assure reliability and the
18 market's concern for profit maximization." (p. 14, lines 3-10)

19 "By virtually all accounts, the wholesale power market is insufficiently
20 robust, deep or transparent." (p. 27, lines 14-15)

21 "The recent Track B initial solicitation process . . . drew so few bids in such
22 meager quantities for so little duration that the outside merchant industry's
23 ability to meet APS customer needs in even the short run is seriously in
24 doubt." (p. 28, line 23 through page 29, line 2)

25 APS witness Hieronymus makes similar statements in his testimony
26 disparaging the capability of the competitive wholesale generation
27 market to meet the needs of APS's customers. According to Mr.
28 Hieronymus:

27 ⁴ In making this statement, Mr. Wheeler fails to note that the initial Track B solicitation
28 sought resources only to fill needs identified for the very near term.

1 "Even in the Track B solicitation, long after the electricity crisis had waned,
2 only quite modest and insufficient amounts of generation owned by
3 others was made available for contracts to meet APS's load." (p. 8, lines
4 1-4)

5 "Even at the peak of the glut in the Western power markets, there was not
6 nearly enough non-PWEC capacity offered [in the Track B Solicitation] to
7 meet APS's needs." (p. 51, lines 5-6)

8 "A new solicitation held in 2006 would be unlikely to yield the capacity
9 that APS will need at prices as attractive as the ratebase cost of the PWEC
10 units and might not yield the needed capacity at all." (p. 51, lines 10-13)

11 In raising an issue that parallels squarely the scope of the RFP solicitation,

12 Mr. Hieronymus goes on to offer testimony regarding conditions in the
13 wholesale market after 2006, when the Track B contracts end. According
14 to Mr. Hieronymus:

15 "Western power markets will cease to be in surplus, most likely between
16 2005 and 2008. My best estimate is for 2007." (p. 9, lines 12-14)

17 "My expectation [is] of a near-shortage and price spike in the latter half of
18 the decade . . . essentially at the same time that the Track B contracts will
19 expire" (p. 9, lines 20-22)

20 It would be "folly" to "requir[e] that APS commit to replace the contracts
21 and buy needed new supply to meet load growth from the market when
22 its current Track B contracts expires at the end of 2006." (p. 50, lines 16-18)

23 According to Mr. Hieronymus, it is because of this "likely tightening" of
24 Western power markets that it would be "quite risky in terms of reliability,
25 prices, and price volatility" for APS to rely on the market for the capacity
26 that ratebasing these [PWEC Assets] would cover." (p. 65, lines 8-10) In
27 other words, based on this "analysis" of power markets after 2006, Mr.

28 Hieronymus concludes that ratebasing the PWEC Assets "is likely to be

1 cost-effective, relative to purchasing from the competitive wholesale
2 market, for APS." (p. 10, lines 3-4) However, that statement lacks
3 supporting empirical evidence, such as the type of evidence an RFP
4 could provide.
5

6 Thus, APS has squarely placed at issue in this proceeding the ability of the
7 competitive wholesale electric market to adequately supply its
8 intermediate and long-term needs.
9

10
11 ***B. The RFP Will Produce Evidence that Bears on the Issues***
12 ***that APS Has Raised in its Direct Testimony.***

13 The RFP seeks to test the very market that Mr. Hieronymus testified would
14 be "quite risky in terms of reliability, prices, and price volatility": the market
15 for capacity after 2006. In its RFP issued December 3, 2003, APS seeks to
16 acquire at least 500 MW of power supply resources, for deliveries
17 commencing June 1, 2007. In particular, APS seeks to purchase
18 generation assets, although it will consider proposals for a long-term
19 power purchase agreement (20 years or longer) sourced from a defined
20 generating unit. The "need" to be filled by the RFP, however, was
21 determined by assuming that the PWECA Assets would be included in the
22 APS rate base: According to Attachment 1 to RFP (APS Summer Supply
23 and Demand Balance Assessment), APS generation is calculated
24 assuming that PWECA Assets are transferred to APS. (Note 1)
25
26
27
28

1 The schedule set forth in the RFP tracks closely the rate case schedule in
2 this proceeding, resulting in sequences that appear to be more than
3 merely coincidental, as set forth below:
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Schedule for APS RFP⁵	Date	Schedule for Rate Case
<i>RFP Issuance</i>	December 3, 2003	
	January 9, 2004	<i>Prefiling of Intervenor Testimony</i>
<i>Proposals Due</i>	January 14, 2004	
<i>Short List Identified</i>	January 28, 2004	
	February 10, 2004	<i>Prefiling of APS Rebuttal</i>
	March 2, 2004	<i>Prefiling of Intervenor Surrebuttal</i>
	March 17, 2004	<i>Prefiling of APS Rejoinder</i>
<i>Execution of Agreements</i>	March 30, 2004	
<i>Filing with ACC for Approval</i>	April 2, 2004	
	April 7, 2004	<i>Hearing Commences</i>

Under these schedules, APS will have the results of the RFP available to it by the time it submits its rebuttal testimony on February 10, 2004 (the "short list" is identified a full two weeks earlier). Moreover, the rate case hearings will commence on the heels of APS's filing with the Commission for approval of the RFP acquisitions.

⁵ Source: RFP, p. 14.

III. ARGUMENT

A. *The APS Objective of Soliciting from the Market to Fill Its Resource Needs Is Sound, but the Proposed RFP May Not Produce Meaningful Results.*

The Alliance fully supports APS looking to the competitive wholesale market as a source of supply to serve its retail customers. The Alliance also endorses APS's use of competitive bidding to do so. Indeed, the Commission's prior orders in Track A and Track B **require** competitive solicitation of APS resource needs not met by APS-owned generation.⁶ The particular terms under which APS is conducting this solicitation, however, may result in an outcome that will be of limited value to APS and the Commission. First, APS has too narrowly defined the "need" to be filled by the RFP, by excluding the 1700 MW proposed to be served by the PWEC Assets. Second, APS is conducting the RFP on a schedule that results in the RFP being unacceptably intertwined with the issues in the pending rate case, potentially distorting both proceedings.

1. The RFP is Too Small in Scale as it Assumes the PWEC Assets are Rate Based and Limits the Resource Block to the Remaining 500 MW of "Need."

⁶ The Track A Order states that APS will be required "to acquire, at a minimum, any required power that cannot be produced from its own existing assets, through the competitive procurement process as developed in the Track B proceeding." Decision No. 65154, p. 23.

1 As described above, a major component of the APS rate filing in this case
2 is APS's request for Commission approval to transfer from PWEC five
3 generating units that were originally built by PWEC as unregulated
4 merchant plants. This proposal has not been acted upon by the
5 Commission, and is the subject of hotly contested hearings in this
6 proceeding, currently scheduled for April 2004. This proposal is vigorously
7 opposed by the Alliance, as well as other parties to this proceeding.
8 (Alliance Petition to Intervene, p. 2) Nonetheless, in defining the "need"
9 to be filled by its RFP, APS calculates that need according to **what is left**
10 **after the PWEC Assets have been added to the APS rate base**. It is
11 premature and presumptuous for APS to assume Commission approval of
12 its proposal to rate base the PWEC Assets. That approval is still months
13 away, if it is ever granted at all.
14 Beyond the brazenness of APS's actions in premising its RFP on an
15 approval that has not been – and may not be – granted, APS's narrowing
16 of the scale of the RFP to 500 MW unnecessarily limits the usefulness of the
17 results that could be produced by a broader RFP. Rather than reducing
18 the size to 500 MW based on an assumption that the PWEC Assets will be
19 rate based, the RFP should be expanded to 2200 MW, which would
20 remove the presumption that the request to rate base the PWEC Assets
21
22
23
24
25
26
27
28

1 will be granted.⁷ Moreover, increasing the scale of the RFP to 2200 MW
2 would likely produce an RFP that (1) attracts more interest and market
3 participation, (2) produces more meaningful results for both APS and the
4 Commission regarding market conditions, and (3) has a higher degree of
5 probability of success.
6

7
8 Expanding the scale of the RFP would also allow the Commission to test
9 APS's rate-basing proposal against the results from the competitive
10 marketplace, and would assist in determining whether the terms and
11 conditions under which the PWEC Assets are proposed to be rate-based
12 in this proceeding are reasonable. APS witness Hieronymus has framed
13 the issues in this way:
14

15 "A new solicitation held in 2006 would be *unlikely to yield the capacity*
16 *that APS will need at prices as attractive as the ratebase cost of the PWEC*
17 *units and might not yield the needed capacity at all."* (p. 51, lines 10-13,
18 emphasis added)

19 It is not necessary to rely on Mr. Hieronymus's conjecture about whether
20 the capacity after 2006 will be offered "at prices as attractive as the
21 ratebase cost of the PWEC units." Nor is it necessary to rely on Mr.
22 Hieronymus's conjecture about whether a solicitation for capacity after
23 2006 will "yield the needed capacity at all." The RFP is directly on point
24 with the issues as framed by Mr. Hieronymus: ***Will the market produce***
25

26
27 ⁷ It would be up to APS and PWEC to determine whether or not the PWEC Assets would
28 actually be offered in an expanded RFP. If PWEC elects to participate, an independent monitor
would be necessary, in accordance with the procedures developed for the Track B solicitation.

1 **necessary capacity after 2006 at prices that are as attractive as the**
2 **ratebase cost of the PWECA Assets?** What is missing is a properly scaled RFP
3 that (1) truly captures the market, and (2) places the proposed "ratebase
4 cost of the PWECA Assets" alongside the responses produced by the
5 competitive marketplace. Expanding the scale of the RFP to 2200 MW
6 would produce an RFP that results in real evidence – hard data, not mere
7 speculation – that is helpful to the Commission in determining the weight
8 to be accorded the testimony offered by Mr. Hieronymus.
9

10
11
12 **2. Conducting an RFP Concurrently with the Rate Case May**
13 **Lead to Questionable Results, as the RFP Bears on**
14 **Matters that APS has Put at Issue in the Rate Case.**

15 Compounding the limitations imposed by APS's narrowing of the scale of
16 the RFP, the schedule being followed for the RFP results in the RFP being
17 conducted concurrently with the rate case. The timing is peculiar on its
18 face, to say the least, given that the resources are not needed until
19 June 2007. Moreover, APS has not provided any explanation for the sense
20 of urgency that seems to be suggested by conducting an RFP solicitation
21 on an expedited six-week schedule that falls over the late December
22 holiday period. For example, the RFP claims it is in "response to current
23 market conditions," which suggests that current market conditions are
24 expected to change in the short term and that opportunities will be lost if
25 RFP is not conducted quickly. (Notice of Intent, November 24, 2003, p. 1)
26
27
28

1 This description of market conditions, however, is directly contradicted by
2
3 APS's own testimony in this proceeding. Mr. Hieronymus states as follows
4 on this point:

5 "Western power markets will cease to be in surplus, most likely between
6 2005 and 2008. My best estimate is for 2007." (p. 9, lines 12-14)

7 "My expectation [is] of a near-shortage and price spike in the latter half of
8 the decade . . . essentially at the same time that the Track B contracts will
9 expire" (p. 9, lines 20-22)

10 If Mr. Hieronymus is to be believed, the same "current market conditions"
11 cited by APS in its Notice of Intent will be present for quite some time, and
12 do not require a "hurry-up" RFP to capture any evaporating opportunities.
13 The RFP also claims that prompt action is necessary in light of the "long
14 lead time required to build or acquire generation." (Notice of Intent,
15 November 24, 2003, p. 1) Under the terms of the RFP, however, the
16 generation solicited is for "assets currently in-service or planned projects
17 that have been sited and permitted." According to the RFP:

18
19 "Proposals for new generating units that are not yet permitted but which
20 would be expressly built to meet APS generating needs will not be
21 considered in this RFP." (RFP, p. 1)

22 The "long lead times" cited in the RFP are irrelevant if the objective is to
23 purchase generating assets that already exist or have been sited and
24 permitted.

25 Conducting the RFP concurrently with the rate case also unnecessarily
26 complicates both proceedings. APS by its testimony has put at issue in this
27
28

1 proceeding the maturity and reliability of the competitive wholesale
2 market in meeting the needs of its customers. By conducting an RFP
3 concurrently with the rate case, APS is attempting to garner additional
4 evidence on the very issue it has put in play. And it is attempting to do so
5 in a manner that permits any evidence to be used only by APS: **the**
6 **outcome of RFP, if it is helpful to APS position, will be available to be used**
7 **by APS in its rebuttal and rejoinder testimony in this case.** The Alliance, on
8 the other hand, will have already filed its direct case and will have limited
9 access, if any, to the RFP data and results for purposes of its surrebuttal
10 testimony. Given the unnecessarily small scale of the RFP – 500 MW versus
11 2200 MW – and the unnecessarily hurried schedule for conducting the RFP
12 – six weeks over the holiday period – it is not clear that the RFP will be
13 successful (and certainly not as successful as it would likely be if more time
14 were allowed, without the competing demands of the rate case
15 schedule). It would be unfair for APS to be able to cite that lack of
16 success in its testimony in this case, particularly where the timing precludes
17 a response by the other parties.

18 Conducting the RFP concurrently with the rate case may also be
19 detrimental to the outcome of both proceedings. The Alliance, for its
20 part, has a huge stake in the outcome of both proceedings. The Alliance
21 is an association of ten independent power producers dedicated to
22
23
24
25
26
27
28

1 meeting Arizona's wholesale electric power needs.⁸ Alliance members or
2 their affiliates own and operate over 6000 megawatts of Arizona-based
3 generation, with another 1,000 MW under development. It is essential to
4 the success of the RFP that Alliance members participate.⁹ And it is in the
5 Alliance's interest to establish in the RFP that the competitive wholesale
6 market in Arizona is sufficiently mature and reliable to be a source of
7 supply for APS customers. At the same time, the Alliance is an active
8 litigant in this rate proceeding, and vigorously opposes APS's proposal to
9 rate base the PWEC Assets. In that regard, the Alliance will be offering
10 testimony in this proceeding demonstrating that the proposal is not in the
11 public interest and showing its negative impact on development of a
12 robustly competitive wholesale generation market in Arizona.

13 With respect to the rate case, the Commission benefits from full and
14 active participation by all parties, including affected independent power
15 producers. Issues and positions in the rate case should not be prejudiced
16 by the solicitation process and outcome of a concurrent RFP. Parties to
17 this proceeding should be free to fashion their rate case position without
18 fear that their position will be distorted or undermined by information that
19
20
21
22
23

24 ⁸ Members of the Alliance are Calpine, Constellation New Energy, Duke Energy North
25 America, LLC, Panda Gila River, L.P., PG&E National Energy Group, PPL Montana, LLC,
26 Reliant Energy, Sempra Energy Resources, Shell Trading, and Southwestern Power Group II,
27 LLC.

28 ⁹ This Motion is submitted on behalf of the Alliance in its status as a party to the rate
proceeding. Nothing in this Motion should be construed as expressing any indication whatsoever
as to the participation of individual members of the Alliance in the RFP.

1 is still being gathered by the utility – on matters that the utility itself has
2 placed at issue in the proceeding and to which the Alliance will have
3 limited opportunity to respond. APS should not be permitted to benefit
4 from an environment of uncertainty that APS itself has created through
5 issuance of an RFP concurrently with the rate case.
6

7
8 Similarly, participation in the RFP should not be affected by considerations
9 regarding a party's position in the rate case. APS customers are best
10 served by an RFP process that allows for and encourages full participation
11 and vigorous competition by independent power producers. APS
12 customers are likely not served by conducting an RFP in an environment
13 where the process affects, and is affected by, rate case issues.
14

15 Conducting the rate case concurrently with the RFP clearly runs the risk of
16 producing detrimental impacts in both proceedings.
17

18 ***B. The Rate Case Schedule Must Be Extended so that the***
19 ***Results of the Expanded RFP can be Incorporated in a Fair***
20 ***and Non-Prejudicial Way in the Rate Case.***

21 These detrimental impacts can be avoided by extending the rate case
22 schedule. This would allow the RFP to be conducted in a manner that
23 does not prejudice issues in the rate case, or parties' positions or strategies
24 with respect to such issues. The parties should be required to submit their
25 prefiled testimony only **after** the RFP has concluded. In this manner, the
26
27
28

1 results of the RFP can be incorporated into the proceeding by all parties in
2 a fair and non-prejudicial manner.

3
4 Moreover, the results of the expanded RFP could be used to evaluate the
5 merits of APS's proposal to rate base the PWEC Assets. APS would be
6 required to place its proposal for rate-basing the PWEC Assets at book
7 cost alongside the competing proposals offered in the RFP. There is no
8 question that the market information gathered by a properly scaled RFP
9 would be of tremendous value to the Commission and other parties in this
10 proceeding in evaluating the appropriateness of including the PWEC
11 Assets at book cost.

12
13 Included as Attachment A is a proposed schedule that would achieve
14 these objectives. The schedule contemplates that the RFP would be re-
15 issued on January 7, 2004, and re-sized to include the 1700 MW that APS
16 presumed would be served by the PWEC Assets. The RFP would proceed
17 along the same time intervals as APS is currently following. Staff and
18 Intervenors would not be required to submit their prefiled direct testimony
19 in the rate proceeding until approximately thirty days after APS makes its
20 filing with the Commission for approval of any acquisition resulting from
21 the RFP. The remaining rate case schedule would proceed along the
22 same time intervals as is provided under the existing schedule. The result is
23 that the date of the hearings would be slipped less than four months –
24 from April 7, 2004 to August 2, 2004.
25
26
27
28

C. *Alternatively, if APS Wants to Proceed with the Existing Rate Case Schedule, Issues Associated with Rate-Basing of PWEC Assets Should be Bifurcated for Later Consideration.*

As an alternative, if APS wishes to proceed under the existing rate case schedule, the issues related to the rate-basing of the PWEC Assets should be bifurcated, for the same reasons as set forth above.¹⁰ The remaining rate case issues, which are unaffected by the concurrent RFP process, could proceed to be considered in accordance with the existing rate case schedule. Issues related to the rate-basing of the PWEC Assets could be litigated pursuant to the schedule set forth in Attachment A. Bifurcating the rate case would not be inconsistent with the "Principles for Resolution" between Staff and APS.¹¹ Paragraph 2 of that document requires consideration in this proceeding of the issue regarding whether the PWEC Assets should be included in rate base. Although bifurcation of this issue places its consideration on a different schedule, it would still be included in this rate proceeding. Nor would bifurcation appear to result in any prejudice to APS, since it has acknowledged in data request responses that no agreement currently exists between APS and PWEC for

¹⁰ Under Arizona Rule of Civil Procedure 42(b), it is appropriate to order a separate trial of any separate issue if necessary to avoid prejudice. The Commission's rules of practice provide that the civil procedure rules govern. (R14-3-216.)

¹¹ "Track 'A' Appeals Issues Principles for Resolution."

1 the asset transfer, nor has a FERC filing been made to obtain the
2 necessary FERC approval for the transfer.

3 4 **IV. REQUEST FOR EXPEDITED CONSIDERATION**

5 The Alliance respectfully requests that this Motion be considered on
6 an expedited basis. The due date for prefiling Staff and Intervenor
7 testimony is less than 3 weeks away, on January 9, 2004. Without
8 expedited consideration, Staff and Intervenors will be required to prepare
9 and submit their testimony on that date, effectively denying the relief
10 requested in this Motion. In support of this request for expedited
11 consideration, it should be noted that the RFP which underlies this Motion
12 was issued by APS only two weeks ago, on December 3. The Alliance has
13 moved forward constructively with all diligence in bringing this Motion for
14 the Commission's consideration.
15
16
17

18 **V. CONCLUSION**

19 For the reasons set forth in this Motion, the Alliance requests
20 that the Commission:

- 21 • **Require APS to expand the scale of its RFP to 2200 MW by defining**
22 **the "need" to be filled in a manner that does not presume rate-**
23 **basing of the PWEC Assets; and**
- 24 • **Extend the rate case schedule to permit the results of the**
25 **expanded RFP to be considered in a fair and non-prejudicial**
26 **manner in the rate case; or**
- 27 • **In the alternative, bifurcate the rate proceeding so that only those**
28 **issues unrelated to the rate-basing of the PWEC Assets will be**
considered under the existing rate case schedule.

1 For the reasons stated in Section IV above, the Alliance
2
3 requests that this Motion be considered on an expedited basis.

4 **RESPECTFULLY SUBMITTED this 19th day of December, 2003.**

5
6 By: *Tasha Cycholl*
7 STOEL RIVES LLP
8 James M. Van Nostrand
9 Katherine A. McDowell
10 George M. Galloway
11 900 SW Fifth Avenue, Suite 2600
12 Portland, OR 97204
13 Telephone: (503) 224-3380

14 LOW & CHILDERS, P.C.
15 S. David Childers
16 Tasha Cycholl
17 2999 North 44th Street, Suite 250
18 Phoenix, AZ 85018
19 Telephone: (602) 266-1166

Attachment A

Proposed Schedule

Current Schedule for APS RFP:

(Source: RFP, p. 14)

RFP Issuance	December 3, 2003
Proposals Due	January 14, 2004
Short List Identified	January 28, 2004
Execution of Agreements	March 30, 2004
Filing with ACC for Approval	April 2, 2004

Current Rate Case Schedule

Staff and Intervenor Testimony	January 9, 2004
APS Rebuttal	February 10, 2004
Staff and Intervenor Surrebuttal	March 2, 2004
APS Rejoinder	March 17, 2004
Hearing Commences	April 7, 2004

Proposed Schedule for Expanded APS RFP:

(Source: RFP, p. 14)

RFP Issuance	January 7, 2004
Proposals Due	February 18, 2004
Short List Identified	March 3, 2004
Execution of Agreements	April 7, 2004
Filing with ACC for Approval	April 9, 2004

Proposed Rate Case Schedule

(Testimony filing dates postponed until approximately 30 days after April 9, 2004 filing of RFP results with ACC for approval)

Staff and Intervenor Testimony	May 7, 2004
APS Rebuttal	June 9, 2004
Staff and Intervenor Surrebuttal	June 30, 2004
APS Rejoinder	July 14, 2004
Hearing Commences	August 2, 2004

1 **Original and 13 copies** of the foregoing filed
2 this 19th day of December, 2003 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington St.
6 Phoenix, AZ 85007

7 Copy of the foregoing hand-delivered this
8 19th day of December, 2003 to:

9 **VIA HAND DELIVERY**

10 Lyn Farmer
11 Chief Administrative Law Judge
12 **Hearing Division**
13 Arizona Corporation Commission
14 1200 W. Washington St. **Room 104**
15 Phoenix, AZ 85007

16 Copies of the foregoing mailed this
17 19th day of December, 2003 to:

18 Thomas L. Mumaw
19 Karilee S. Ramaley
20 PINNACLE WEST
21 CAPITAL CORPORATION
22 P.O. Box 53999, MS 8695
23 Phoenix, Arizona 85072-3999

24 Jeffrey B. Guldner
25 Faraq Sanei
26 SNELL & WILMER
27 One Arizona Center
28 400 E. Van Buren Street
29 Phoenix, Arizona 85004-2202
30 Attorneys for Arizona Public Service Company

31 C. Webb Crockett
32 FENNEMORE CRAIG
33 3003 N. Central Avenue, Suite 2600
34 Phoenix, Arizona 85012
35 Attorneys for AECC and Phelps Dodge

36 Major Allen G. Erickson
37 AFCES A/ULT
38 139 Barnes Drive, Suite 1
39 Tyndall AFB, Florida 32403-5319
40 Attorney for FEA

1 Michael L. Kurtz
2 BOEHM, KURTZ & LOWRY
3 36 E. Seventh Street, Suite 2110
4 Cincinnati, Ohio 45202
5 Attorneys for Kroger Company

6 Scott Wakefield
7 RUCO
8 1110 W. Washington St., Suite 220
9 Phoenix, Arizona 85007

10 Walter W. Meek
11 AUIA
12 2100 N. Central Ave., Suite 210
13 Phoenix, Arizona 85067

14 Nicholas J. Enoch
15 LUBIN & ENOCH
16 349 N. Fourth Avenue
17 Phoenix, Arizona 85003
18 Attorneys for IBEW

19 Bill Murphy
20 MURPHY CONSULTING
21 2422 E. Palo Verde Drive
22 Phoenix, Arizona 85016
23 Consultant for Arizona Cogeneration Assn.

24 Jay L. Shapiro
25 Patrick J. Black
26 FENNEMORE CRAIG
27 3003 N. Central Avenue, Suite 2600
28 Phoenix, Arizona 85012
Attorneys for Panda Gila River, L.P.

Robert W. Geake
ARIZONA WATER COMPANY
P.O. Box 29006
Phoenix, Arizona 85038-9006

Andrew W. Bettwy
Bridget A. Branigan
SOUTHWEST GAS CORPORATION
5241 Spring Mountain Road
Las Vegas, Nevada 89150

Timothy M. Hogan
ARIZONA CENTER FOR LAW
IN THE PUBLIC INTEREST
202 E. McDowell Rd., Suite 153
Phoenix, Arizona 85004
Attorneys for Western Resource Advocates

1 Paul R. Michaud
2 MARTINEZ & CURTIS, P.C.
3 2712 N. 7th Street
4 Phoenix, Arizona 85006-1090
5 Attorneys for Constellation NewEnergy, Inc., Strategic Energy, L.L.C. and Dome
6 Valley Energy Partners, LLC

7 Raymond S. Heyman
8 Laura Schoeler
9 ROSHKA, HEYMAN & DeWULF
10 400 E. Van Buren, Suite 800
11 Phoenix, Arizona 85004
12 Attorneys for UniSource Energy Services

13 Deborah R. Scott
14 UNISOURCE ENERGY SERVICES
15 One South Church Street, Suite 200
16 Tucson, Arizona 85702

17 Michael L. Kurtz
18 36 E. 7th Street, Suite 2110
19 Cincinnati, Ohio 45202

20 J. William Moore
21 Attorney at Law
22 1144 E. Jefferson
23 Phoenix, Arizona 85034

24 Christopher Kempley, Chief Counsel
25 ARIZONA CORPORATION COMMISSION
26 1200 W. Washington Street
27 Phoenix, Arizona 85007

28 Ernest Johnson, Director of Utilities
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007

Arizona Reporting Service, Inc.
2627 N. Third Street, Suite Three
Phoenix, Arizona 85004-1103

By: 

SECY4/ARIZONA COMPETITIVE POWER ALLIANCE/PLEADINGS/MOTION TO REVISE THE PROCEDURAL SCHEDULE
11280-001